

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SHERRY E. BECKER,

Plaintiff,

v.

STRATA ORCHARD, LLC, et al.,

Defendants.

NO: CV-11-5108-RMP

ORDER GRANTING IN PART
DEFENDANT KHA'S MOTION FOR
JUDGMENT ON THE PLEADINGS

BEFORE THE COURT is a motion for judgment on the pleadings filed by Defendant Kennewick Housing Authority ("KHA"), ECF No. 111. Plaintiff Sherry Becker, proceeding pro se, opposes the motion. ECF No. 121.

FACTS AND PROCEDURAL HISTORY

All defendants except for KHA ("non-KHA Defendants") previously filed a motion for judgment on the pleadings. ECF No. 62. The Court issued an order on August 29, 2012, granting in part and denying in part the non-KHA Defendants' motion.

1 The Court construed Ms. Becker's amended complaint as asserting causes of
2 action for failing to provide a reasonable accommodation under the Fair Housing
3 Act ("FHA"), 42 U.S.C. § 3601 *et seq.*, for engaging in a discriminatory housing
4 practice under the FHA on the basis of Ms. Becker's disability, and for charging
5 her illegally high rent based on an allegedly mistaken belief that she was hiding
6 income from the United States Coast Guard. ECF No. 83, at 3.

7 The Court dismissed Ms. Becker's discrimination claim against the non-
8 KHA Defendants because she failed to allege causation between her discrimination
9 and any action taken towards her by the non-KHA Defendants. The Court
10 additionally dismissed Ms. Becker's claim for the alleged charging of illegal rent
11 against the non-KHA Defendants, because her claim that she was entitled to
12 receive greater rental assistance under the law implicated only KHA and not the
13 other defendants. ECF No. 62, at 11-12.

14 The Court declined to dismiss Ms. Becker's other claim based on an alleged
15 refusal to provide a reasonable accommodation. Ms. Becker's reasonable
16 accommodation claim centers on the Defendants' alleged failure to accommodate
17 her disability by providing her with a free parking space close to her apartment.
18 The Court noted that Plaintiff had properly alleged a handicap under the FHA and
19 that Defendants did not dispute that they knew or should have known of Ms.
20 Becker's handicap. *See, e.g., McGary v. City of Portland*, 386 F.3d 1259, 1262

1 (9th Cir. 2004) (setting forth the elements for a failure to accommodate claim
2 under the FHA).

3 The Court further noted that the parties appeared to dispute whether
4 accommodation may have been necessary to afford Ms. Becker an opportunity to
5 use and enjoy her dwelling and whether the Defendants refused to make such
6 accommodation by providing a parking space free of charge. *See id.* The Court
7 noted that providing a free parking space may be a reasonable accommodation in
8 some circumstances and that the non-KHA Defendants were therefore not entitled
9 to judgment as a matter of law on this claim. ECF No. 83, at 8-11.

10 KHA has now filed a motion for judgment on the pleadings pursuant to Rule
11 12(c), asserting that it is entitled to dismissal on all of Ms. Becker's claims.

12 DISCUSSION

13 A court should grant a motion brought pursuant to Rule 12(c) where,
14 accepting as true allegations of fact in the complaint, construed in the light most
15 favorable to the non-moving party, "there is no issue of material fact in dispute,
16 and the moving party is entitled to judgment as a matter of law." *Fleming v.*
17 *Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). When a Rule 12(c) motion is used to
18 raise a defense of failure to state a claim, a motion for judgment on the pleadings
19 faces the same test as a motion under Rule 12(b)(6). *McGlinchy v. Shell Chem.*
20 *Co.*, 845 F.2d 802, 810 (9th Cir. 1988).

1 In ruling on a motion under Rule 12(b)(6), a court must construe the
2 pleadings in the light most favorable to the plaintiff and accept as true all material
3 factual allegations in the complaint, as well as any reasonable inferences drawn
4 therefrom. *Broam v. Bogan*, 320 F.3d 1023, 1028 (9th Cir. 2003). “[C]onclusory
5 allegations without more are insufficient to defeat a motion to dismiss for failure to
6 state a claim.” *McGlinchy*, 845 F.2d at 810. A complaint may be dismissed for
7 failure to state a claim under Rule 12(b)(6) where the factual allegations do not
8 raise the right to relief above the speculative level. *Ashcroft v. Iqbal*, 556 U.S. 662
9 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). Conversely, a
10 complaint may not be dismissed for failure to state a claim where the allegations
11 plausibly show that the pleader is entitled to relief. *Twombly*, 550 U.S. at 555.

12 **A. Reasonable Accommodation Claim**

13 The Fair Housing Act (“FHA”), 42 U.S.C. § 3601 *et seq.*, as amended by the
14 Fair Housing Amendments Act of 1988, Pub.L. No. 100-430, 102 Stat. 1626
15 (1988), bars housing discrimination against people with disabilities. Such
16 discrimination includes “refusal to make reasonable accommodations in rules,
17 policies, practices, or services, when such accommodations may be necessary to
18 afford such person equal opportunity to use and enjoy a dwelling.” 42 U.S.C. §
19 3604(f)(3)(B).

1 To state a discrimination claim under the FHA for failure to reasonably
2 accommodate, a plaintiff must allege that (1) she “suffers from a handicap as
3 defined by the [FHA],” (2) the defendant or defendants “‘knew or reasonably
4 should have known of’” plaintiff’s handicap; (3) “accommodation of the handicap
5 ‘may be necessary’ to afford [plaintiff] an equal opportunity to use and enjoy [her]
6 dwelling;” and (4) the defendant or defendants “refused to make such
7 accommodation.” *McGary v. City of Portland*, 386 F.3d 1259, 1262 (9th Cir.
8 2004) (quoting *Giebler v. M & B Assocs.*, 343 F.3d 1143, 1147 (9th Cir. 2003)).

9 *Pro se* pleadings are liberally construed. *See Haines v. Kerner*, 404 U.S.
10 519, 520 (1972) (per curiam); *Balistreri v. Pacifica Police Dep’t.*, 901 F.2d 696,
11 699 (9th Cir. 1988). Courts also apply liberal pleading standards to determine
12 whether a litigant has stated a claim under the FHA. *See McGary*, 386 F.3d at
13 1262.

14 KHA argues that Ms. Becker has not even alleged that it refused to make a
15 reasonable accommodation. Ms. Becker’s amended complaint alleged only that
16 Defendant Riverstone Residential Group, LLC (“RRG”) refused to provide her the
17 accommodation she requested, a free parking spot. ECF No. 7, at 2. In her
18 opposition to KHA’s motion, Ms. Becker confirmed that providing the free parking
19 spot was not KHA’s responsibility. ECF No. 121, at 2. Thus, dismissal of this
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1 claim is appropriate as against Defendant KHA because Ms. Becker has not
2 alleged that KHA denied her reasonable accommodation.

3 **B. Discrimination Claim**

4 Under the FHA, it is unlawful to “discriminate against any person in the
5 terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of
6 services or facilities in connection with such dwelling, because of a handicap of
7 . . . a person residing in or intending to reside in that dwelling.” 42 U.S.C. §
8 3604(f)(2); 24 C.F.R. § 100.70(b). In its Order dated August 29, 2012, the Court
9 dismissed this claim as against the non-KHA Defendants because Ms. Becker had
10 not alleged that the rent that she was charged had any connection to her disability.
11 ECF No. 62, at 11-12. KHA urges dismissal of this claim for the same reason.

12 In her opposition, Ms. Becker urges the Court to deny dismissal of this claim
13 because, according to her, KHA has admitted that it raised her rent in violation of
14 the law. But Ms. Becker’s opposition suffers from the same deficiency as her
15 amended complaint. Ms. Becker has not alleged that KHA’s act of raising her rent
16 was undertaken *because of her disability*. Thus, Ms. Becker has not adequately
17 pled a claim for discrimination under the FHA and dismissal is appropriate on this
18 claim.

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1 **C. Excessive Rent Claim**

2 Ms. Becker asserted in her first amended complaint that she had been
3 charged illegally high rent based on a mistaken belief that she was hiding income
4 from the United States Coast Guard. ECF No. 7, at 3-4. In its Order dated August
5 28, 2012, the Court dismissed this claim as against the non-KHA Defendants
6 because any claim that Ms. Becker had regarding her alleged entitlement to greater
7 rental assistance implicated only KHA and not the other defendants. ECF No. 83,
8 at 12.

9 Although KHA requested dismissal of all claims against it in its motion for
10 judgment on the pleadings, KHA did not address Ms. Becker's claim of greater
11 rental assistance under the United States Housing Act of 1937, codified, as
12 amended, at 42 U.S.C. § 1437 *et seq.*, and its implementing federal regulations.
13 Therefore, KHA has not shown that it is entitled to dismissal of the claim of
14 greater rental assistance and that claim remains in effect as against KHA only.

15 Accordingly, **IT IS HEREBY ORDERED** that KHA's motion for
16 judgment on the pleadings, **ECF No. 111**, is **GRANTED IN PART**. Plaintiff's
17 claims against KHA for the alleged failure to provide a reasonable accommodation

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1 and for alleged discrimination under the FHA are **dismissed with prejudice**.

2 The District Court Clerk is directed to enter this Order, enter judgment for
3 Defendant KHA accordingly, and provide copies of this Order to counsel.

4 **DATED** this 6th day of February 2013.

5
6 *s/ Rosanna Malouf Peterson*

7 ROSANNA MALOUF PETERSON
8 Chief United States District Court Judge
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